

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Retention by Broadcasters of)	MB Docket No. 04-232
Program Recordings)	

To: The Commission

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association (“CBA”) hereby submits its Comments in response to the Notice of Proposed Rule Making in this proceeding, FCC 04-145, released July 7, 2004. CBA is the trade association of the nation’s Class A and Low Power Television (“LPTV”) stations and represents the interests of the licensees of these stations in legislative, judicial, and administrative proceedings. CBA opposes the proposed recording requirement, because it would place an undue burden on the small businesses that typically own and operate Class A and LPTV stations, it is an over-broad approach that burdens all stations because of problems caused by only a few stations, and it would discourage the production of desirable local programming.

2. The indecency problem which the Commission appears to be trying to address is not pervasive in the broadcasting industry. The problem, to the extent it exists, is focused on a few programs broadcast by a relatively small number of stations, most of which are operated by large group owners. In contrast, the Commission’s proposed solution would burden all stations. The burden could be serious for Class A and LPTV stations, many of which are stand-alone stations operated by small businesses with limited resources. Purchasing, operating, and maintaining recording equipment and storage media for up to 90 days of 24-hour-a-day programming could be beyond the means of many of these stations; and even those who can afford it would have to

divert significant resources away from what they have available to devote to local programming and to other aspects of running their businesses.

3. CBA questions whether the FCC can justify imposing a burden on all stations to address a problem caused by a few stations, under both First Amendment law and laws intended to avoid placing burdens on small businesses. If a universal recording requirement is ultimately adopted, however, it should certainly not be imposed on individual stations with respect to network and syndicated programming that can be recorded and catalogued in one place by the originating network or syndicator. There can be no good reason for requiring duplicative and wasteful recording of the same material by stations throughout the country. At most, each station should be required to record only programming it produces or programming that is unique to that station.

4. But when boiled down to the least wasteful approach of requiring recording of only local or single-station programming, the proposal completely breaks down, because at that point, it becomes an extra burden on, and a negative incentive against, producing local and unique programming. Considering the recent emphasis on encouraging local programming, evidenced by the ongoing proceedings in MB Docket No. 04-233 and the recent localism hearings in Charlotte, NC, San Antonio, TX, Rapid City, SD, and Monterey, CA, it is contradictory, if not worse, to then turn around and create a regulatory burden that discourages local programming.

5. The Commission should require stations that are the cause of the indecency problem -- especially repeat offenders -- to find a solution to that problem. It should not force all stations to pay for the transgressions of a few. If a recording requirement is adopted, it should be imposed only on stations that have a record of offenses. Any broader requirement must have an exception

for small businesses with limited resources and should be structured so as not to discourage local programming production.¹

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Respectfully submitted,



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August 26, 2004

¹ At a minimum, the Commission should permit recording in compressed formats and not require broadcast-quality recording.

² Admitted in Maryland. Not admitted in D.C.